

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 384

Introduced by Senator Evans

February 15, 2011

An act to amend Section 437c of the Code of Civil Procedure, and to amend Section 70616 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as amended, Evans. Courts: complex case fees.

Existing law requires a \$550 fee to be paid by each party to a civil action at the time of filing its first paper if the case is designated as a complex case or whenever the case is determined by the court to be a complex case. Existing law imposes a limitation of \$10,000 on the total amount of fees collected from all plaintiffs, and the same limitation on the total amount of fees collected from all defendants, intervenors, respondents, and adverse parties appearing in a complex case.

This bill would require the payment of a single complex case fee on behalf of all plaintiffs, as specified, and would make other conforming changes. The bill would provide that these changes are declaratory of existing law.

Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty.

The bill would additionally authorize a party to move for summary adjudication of a legal issue or claim for damages, other than punitive damages, that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty according to specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 437c of the Code of Civil Procedure is
2 amended to read:

3 437c. (a) Any party may move for summary judgment in any
4 action or proceeding if it is contended that the action has no merit
5 or that there is no defense to the action or proceeding. The motion
6 may be made at any time after 60 days have elapsed since the
7 general appearance in the action or proceeding of each party against
8 whom the motion is directed or at any earlier time after the general
9 appearance that the court, with or without notice and upon good
10 cause shown, may direct. Notice of the motion and supporting
11 papers shall be served on all other parties to the action at least 75
12 days before the time appointed for hearing. However, if the notice
13 is served by mail, the required 75-day period of notice shall be
14 increased by five days if the place of address is within the State
15 of California, 10 days if the place of address is outside the State
16 of California but within the United States, and 20 days if the place
17 of address is outside the United States, and if the notice is served
18 by facsimile transmission, Express Mail, or another method of
19 delivery providing for overnight delivery, the required 75-day
20 period of notice shall be increased by two court days. The motion
21 shall be heard no later than 30 days before the date of trial, unless
22 the court for good cause orders otherwise. The filing of the motion
23 shall not extend the time within which a party must otherwise file
24 a responsive pleading.

25 (b) (1) The motion shall be supported by affidavits, declarations,
26 admissions, answers to interrogatories, depositions, and matters
27 of which judicial notice shall or may be taken. The supporting
28 papers shall include a separate statement setting forth plainly and
29 concisely all material facts which the moving party contends are
30 undisputed. Each of the material facts stated shall be followed by
31 a reference to the supporting evidence. The failure to comply with
32 this requirement of a separate statement may in the court's
33 discretion constitute a sufficient ground for denial of the motion.

34 (2) Any opposition to the motion shall be served and filed not
35 less than 14 days preceding the noticed or continued date of

1 hearing, unless the court for good cause orders otherwise. The
2 opposition, where appropriate, shall consist of affidavits,
3 declarations, admissions, answers to interrogatories, depositions,
4 and matters of which judicial notice shall or may be taken.

5 (3) The opposition papers shall include a separate statement
6 that responds to each of the material facts contended by the moving
7 party to be undisputed, indicating whether the opposing party
8 agrees or disagrees that those facts are undisputed. The statement
9 also shall set forth plainly and concisely any other material facts
10 that the opposing party contends are disputed. Each material fact
11 contended by the opposing party to be disputed shall be followed
12 by a reference to the supporting evidence. Failure to comply with
13 this requirement of a separate statement may constitute a sufficient
14 ground, in the court's discretion, for granting the motion.

15 (4) Any reply to the opposition shall be served and filed by the
16 moving party not less than five days preceding the noticed or
17 continued date of hearing, unless the court for good cause orders
18 otherwise.

19 (5) Evidentiary objections not made at the hearing shall be
20 deemed waived.

21 (6) Except for subdivision (c) of Section 1005 relating to the
22 method of service of opposition and reply papers, Sections 1005
23 and 1013, extending the time within which a right may be exercised
24 or an act may be done, do not apply to this section.

25 (7) Any incorporation by reference of matter in the court's file
26 shall set forth with specificity the exact matter to which reference
27 is being made and shall not incorporate the entire file.

28 (c) The motion for summary judgment shall be granted if all
29 the papers submitted show that there is no triable issue as to any
30 material fact and that the moving party is entitled to a judgment
31 as a matter of law. In determining whether the papers show that
32 there is no triable issue as to any material fact the court shall
33 consider all of the evidence set forth in the papers, except that to
34 which objections have been made and sustained by the court, and
35 all inferences reasonably deducible from the evidence, except
36 summary judgment may not be granted by the court based on
37 inferences reasonably deducible from the evidence, if contradicted
38 by other inferences or evidence, which raise a triable issue as to
39 any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(e) If a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment may not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

1 (g) Upon the denial of a motion for summary judgment, on the
2 ground that there is a triable issue as to one or more material facts,
3 the court shall, by written or oral order, specify one or more
4 material facts raised by the motion as to which the court has
5 determined there exists a triable controversy. This determination
6 shall specifically refer to the evidence proffered in support of and
7 in opposition to the motion which indicates that a triable
8 controversy exists. Upon the grant of a motion for summary
9 judgment, on the ground that there is no triable issue of material
10 fact, the court shall, by written or oral order, specify the reasons
11 for its determination. The order shall specifically refer to the
12 evidence proffered in support of, and if applicable in opposition
13 to, the motion which indicates that no triable issue exists. The court
14 shall also state its reasons for any other determination. The court
15 shall record its determination by court reporter or written order.

16 (h) If it appears from the affidavits submitted in opposition to
17 a motion for summary judgment or summary adjudication or both
18 that facts essential to justify opposition may exist but cannot, for
19 reasons stated, then be presented, the court shall deny the motion,
20 or order a continuance to permit affidavits to be obtained or
21 discovery to be had or may make any other order as may be just.
22 The application to continue the motion to obtain necessary
23 discovery may also be made by ex parte motion at any time on or
24 before the date the opposition response to the motion is due.

25 (i) If, after granting a continuance to allow specified additional
26 discovery, the court determines that the party seeking summary
27 judgment has unreasonably failed to allow the discovery to be
28 conducted, the court shall grant a continuance to permit the
29 discovery to go forward or deny the motion for summary judgment
30 or summary adjudication. This section does not affect or limit the
31 ability of any party to compel discovery under the Civil Discovery
32 Act (Title 4 (commencing with Section 2016.010) of Part 4).

33 (j) If the court determines at any time that any of the affidavits
34 are presented in bad faith or solely for purposes of delay, the court
35 shall order the party presenting the affidavits to pay the other party
36 the amount of the reasonable expenses which the filing of the
37 affidavits caused the other party to incur. Sanctions may not be
38 imposed pursuant to this subdivision, except on notice contained
39 in a party's papers, or on the court's own noticed motion, and after
40 an opportunity to be heard.

1 (k) Except when a separate judgment may properly be awarded
2 in the action, no final judgment may be entered on a motion for
3 summary judgment prior to the termination of the action, but the
4 final judgment shall, in addition to any matters determined in the
5 action, award judgment as established by the summary proceeding
6 herein provided for.

7 (l) In actions which arise out of an injury to the person or to
8 property, if a motion for summary judgment was granted on the
9 basis that the defendant was without fault, no other defendant
10 during trial, over plaintiff's objection, may attempt to attribute
11 fault to or comment on the absence or involvement of the defendant
12 who was granted the motion.

13 (m) (1) A summary judgment entered under this section is an
14 appealable judgment as in other cases. Upon entry of any order
15 pursuant to this section, except the entry of summary judgment, a
16 party may, within 20 days after service upon him or her of a written
17 notice of entry of the order, petition an appropriate reviewing court
18 for a peremptory writ. If the notice is served by mail, the initial
19 period within which to file the petition shall be increased by five
20 days if the place of address is within the State of California, 10
21 days if the place of address is outside the State of California but
22 within the United States, and 20 days if the place of address is
23 outside the United States. If the notice is served by facsimile
24 transmission, Express Mail, or another method of delivery
25 providing for overnight delivery, the initial period within which
26 to file the petition shall be increased by two court days. The
27 superior court may, for good cause, and prior to the expiration of
28 the initial period, extend the time for one additional period not to
29 exceed 10 days.

30 (2) Before a reviewing court affirms an order granting summary
31 judgment or summary adjudication on a ground not relied upon
32 by the trial court, the reviewing court shall afford the parties an
33 opportunity to present their views on the issue by submitting
34 supplemental briefs. The supplemental briefing may include an
35 argument that additional evidence relating to that ground exists,
36 but that the party has not had an adequate opportunity to present
37 the evidence or to conduct discovery on the issue. The court may
38 reverse or remand based upon the supplemental briefing to allow
39 the parties to present additional evidence or to conduct discovery

1 on the issue. If the court fails to allow supplemental briefing, a
2 rehearing shall be ordered upon timely petition of any party.

3 (n) (1) If a motion for summary adjudication is granted, at the
4 trial of the action, the cause or causes of action within the action,
5 affirmative defense or defenses, claim for damages, or issue or
6 issues of duty as to the motion which has been granted shall be
7 deemed to be established and the action shall proceed as to the
8 cause or causes of action, affirmative defense or defenses, claim
9 for damages, or issue or issues of duty remaining.

10 (2) In the trial of the action, the fact that a motion for summary
11 adjudication is granted as to one or more causes of action,
12 affirmative defenses, claims for damages, or issues of duty within
13 the action shall not operate to bar any cause of action, affirmative
14 defense, claim for damages, or issue of duty as to which summary
15 adjudication was either not sought or denied.

16 (3) In the trial of an action, neither a party, nor a witness, nor
17 the court shall comment upon the grant or denial of a motion for
18 summary adjudication to a jury.

19 (o) A cause of action has no merit if either of the following
20 exists:

21 (1) One or more of the elements of the cause of action cannot
22 be separately established, even if that element is separately pleaded.

23 (2) A defendant establishes an affirmative defense to that cause
24 of action.

25 (p) For purposes of motions for summary judgment and
26 summary adjudication:

27 (1) A plaintiff or cross-complainant has met his or her burden
28 of showing that there is no defense to a cause of action if that party
29 has proved each element of the cause of action entitling the party
30 to judgment on that cause of action. Once the plaintiff or
31 cross-complainant has met that burden, the burden shifts to the
32 defendant or cross-defendant to show that a triable issue of one or
33 more material facts exists as to that cause of action or a defense
34 thereto. The defendant or cross-defendant may not rely upon the
35 mere allegations or denials of its pleadings to show that a triable
36 issue of material fact exists but, instead, shall set forth the specific
37 facts showing that a triable issue of material fact exists as to that
38 cause of action or a defense thereto.

39 (2) A defendant or cross-defendant has met his or her burden
40 of showing that a cause of action has no merit if that party has

1 shown that one or more elements of the cause of action, even if
2 not separately pleaded, cannot be established, or that there is a
3 complete defense to that cause of action. Once the defendant or
4 cross-defendant has met that burden, the burden shifts to the
5 plaintiff or cross-complainant to show that a triable issue of one
6 or more material facts exists as to that cause of action or a defense
7 thereto. The plaintiff or cross-complainant may not rely upon the
8 mere allegations or denials of its pleadings to show that a triable
9 issue of material fact exists but, instead, shall set forth the specific
10 facts showing that a triable issue of material fact exists as to that
11 cause of action or a defense thereto.

12 (q) This section does not extend the period for trial provided by
13 Section 1170.5.

14 (r) Subdivisions (a) and (b) do not apply to actions brought
15 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
16 of Part 3.

17 (s) (1) *Notwithstanding subdivision (f), a party may move for*
18 *summary adjudication of a legal issue or a claim for damages*
19 *other than punitive damages that does not completely dispose of*
20 *a cause of action, an affirmative defense, or an issue of duty.*

21 (2) *This motion may only be brought upon the stipulation of the*
22 *parties whose claims or defenses are put at issue by the motion*
23 *and a prior determination by the court that the motion will further*
24 *the interests of judicial economy, by reducing the time to be*
25 *consumed in trial, or significantly increase the ability of the parties*
26 *to resolve the case by settlement.*

27 (3) *Before a motion may be filed pursuant to this subdivision,*
28 *the parties shall submit to the court a joint stipulation clearly*
29 *setting forth the issue or issues to be adjudicated, with a*
30 *declaration from each stipulating party demonstrating that a ruling*
31 *on the motion will further the interests of judicial economy by*
32 *reducing the time to be consumed in trial or significantly increasing*
33 *the probability of settlement. Within 15 days of the court's receipt*
34 *of the stipulation and declarations, the court shall notify the*
35 *submitting parties as to whether the motion may be filed. If the*
36 *court elects not to allow the filing of the motion, the stipulating*
37 *parties may request, and upon that request the court shall conduct,*
38 *an informal conference with the stipulating parties to permit further*
39 *evaluation of the proposed stipulation; but no further papers may*
40 *be filed by the parties in support of the proposed motion.*

1 (4) Any motion for summary adjudication brought under this
2 subdivision shall contain the following language, or its substantial
3 equivalent, in the notice of motion:

4
5 “This motion is made pursuant to subdivision (s) of Section 437c
6 of the Code of Civil Procedure. The parties to this motion stipulate
7 that the court shall hear the motion and that the resolution of this
8 motion will either further the interests of judicial economy by
9 reducing the time to be consumed in trial or significantly increase
10 the ability of the parties to resolve the case by settlement.”

11
12 (5) The notice of motion shall be signed by counsel for all
13 parties, and by those parties in propria persona, to the motion.

14 (6) The joint stipulation shall be served on all parties, if any,
15 who are not parties to the motion specified in paragraph (1). If,
16 within 10 days of the submission of the stipulation, any
17 nonstipulating party files an objection to the determination of the
18 issue, the court may consider the objection in determining whether
19 or not to allow the motion to be filed.

20 (7) A motion for summary adjudication brought pursuant to
21 this subdivision may be made by itself or as an alternative to a
22 motion for summary judgment and shall proceed in all procedural
23 respects as a motion for summary judgment.

24 ~~(s)~~

25 (t) For the purposes of this section, a change in law does not
26 include a later enacted statute without retroactive application.

27 ~~SECTION 1.~~

28 SEC. 2. Section 70616 of the Government Code is amended
29 to read:

30 70616. (a) In addition to the first paper filing fee required by
31 Section 70611 or 70613, a single complex case fee shall be paid
32 to the clerk on behalf of all plaintiffs, whether filing separately or
33 jointly, either at the time of the filing of the first paper if the case
34 is designated as complex pursuant to the California Rules of Court,
35 or, if no such designation was made, in each case in which a court
36 determines that the case is a complex case pursuant to the
37 California Rules of Court, within 10 calendar days of the filing of
38 the court’s order.

39 (b) In addition to the first appearance fee required under Section
40 70612 or 70614, a complex case fee shall be paid on behalf of each

1 defendant, intervenor, respondent, or adverse party, whether filing
2 separately or jointly, either at the time that party files its first paper
3 in a case if the case is designated or counterdesignated as complex
4 pursuant to the California Rules of Court, or, if no such designation
5 was made, in each case in which a court determines that the case
6 is a complex case pursuant to the California Rules of Court, within
7 10 calendar days of the filing of the court's order. This additional
8 complex fee shall be charged to each defendant, intervenor,
9 respondent, or adverse party appearing in the case, but the total
10 complex fees collected from all the defendants, intervenors,
11 respondents, or other adverse parties appearing in a complex case
12 shall not exceed ten thousand dollars (\$10,000).

13 (c) In each case in which the court determines that a case that
14 has been designated or counterdesignated as complex is not a
15 complex case, the court shall order reimbursement to the parties
16 of the amount of any complex case fees that the parties have
17 previously paid pursuant to subdivision (a) or (b).

18 (d) In each case determined to be complex in which the total
19 fees actually collected exceed, or if collected would exceed, the
20 limit in subdivision (b), the court shall make any order as is
21 necessary to ensure that the total complex fees paid by the
22 defendants, intervenors, respondents, or other adverse parties
23 appearing in the case do not exceed the limit and that the complex
24 fees paid by those parties are apportioned fairly among those
25 parties.

26 (e) The complex case fee established by this section shall be
27 five hundred fifty dollars (\$550), unless the fee is reduced pursuant
28 to this section. The fee shall be transmitted to the Trial Court Trust
29 Fund as provided in Section 68085.1.

30 (f) The fees provided by this section are in addition to the filing
31 fee authorized by Section 70611, 70612, 70613, or 70614.

32 (g) Failure to pay the fees required by this section shall have
33 the same effect as the failure to pay a filing fee, and shall be subject
34 to the same enforcement and penalties.

35 (h) The amendments made to this section during the 2011–12
36 Regular Session of the Legislature do not constitute a change in,
37 but are declaratory of, existing law.

O